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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION X
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

| | | |
|--|---|-------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| Lower Duwamish Waterway |) | |
| |) | |
| Port of Seattle, King County, |) | |
| City of Seattle, The Boeing Company, |) | |
| |) | |
| RESPONDENTS |) | |
| |) | |
| |) | |
| Proceeding Under Sections 104, 122(a), |) | U.S. EPA Docket and |
| 122(d)(3) of the Comprehensive |) | Number |
| Environmental Response, Compensation, |) | Ecology No. DE { } |
| and Liability Act (CERCLA), as amended, |) | |
| 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3) and Under the |) | |
| Washington State Model Toxics Control Act |) | |
| (MTCA), ch. 70.105D RCW. |) | |
| _____ |) | |

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology (Ecology) as regulatory agencies and the Port of Seattle, King County, City of Seattle, and

1 The Boeing Company, as Respondents. This order is both an Administrative Order on Consent
2 under CERCLA and an Agreed Order under MTCA. Unless otherwise specified, the terms
3 “Consent Order” and “Order” as used herein refers to orders issued under both authorities. This
4 Consent Order concerns the preparation of and performance of, and reimbursement of costs
5 incurred by EPA and Ecology in connection with a river-wide Remedial Investigation and
6 Feasibility Study (RI/FS) for the Lower Duwamish Waterway Site in Seattle, Washington.
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8 II. JURISDICTION

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10 1. This Consent Order is issued under the authority vested in the President of
11 the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental
12 Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), and
13 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23,
14 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional
15 Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been
16 redelegated by the Regional Administrator to the Region X Director, Environmental Cleanup
17 Division (ECL), and further delegated to ECL Unit Managers thereunder. This order is also issued
18 by Ecology under the authority of RCW 70.105D.050(1).
19

20 2. Respondents agree to undertake the actions required by the terms and
21 conditions of this Consent Order. In any action by EPA, the United States, or Ecology to enforce
22 the terms of this Consent Order, Respondents consent to and agree not to contest the authority or
23 jurisdiction of EPA or Ecology to issue or enforce this Consent Order, and agree not to contest the
24 validity of this Order or its terms.
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26

27 III. PARTIES BOUND

1 1. This Consent Order shall apply to and be binding upon EPA and Ecology,
2 and shall be binding upon Respondents, their agents, successors, assigns, officers, directors, and
3 principals. Respondents are jointly and severally responsible for carrying out the actions required
4 of them by this Consent Order. The signatories to this Consent Order certify that they are
5 authorized to execute and legally bind the parties they represent to this Consent Order. No change
6 in the ownership or corporate status of any Respondent or of any facility or the Site shall alter
7 Respondents' responsibilities under this Consent Order.
8

9 2. Respondents shall provide a copy of this Consent Order to any subsequent
10 owners or successors before ownership rights or stock or assets in a corporate acquisition are
11 transferred. Respondents shall provide a copy of this Consent Order to all contractors,
12 subcontractors, laboratories, and consultants which are retained to conduct any work performed
13 under this Consent Order, within fourteen (14) days after the effective date of this Consent Order
14 or the date of retaining their services, whichever is later. Respondents shall condition any such
15 contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any
16 contract, Respondents are responsible for compliance with this Consent Order and for ensuring
17 that their subsidiaries, employees, contractors, consultants, subcontractors, agents, and attorneys
18 comply with this Consent Order.
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21 3. No voluntary conveyance or relinquishment of title, easement, leasehold, or
22 other interest in any portion of the Site shall be consummated by Respondents without provision
23 for continued implementation of all requirements of this Order and implementation of any remedial
24 actions found to be necessary as a result of this Order. Prior to transfer of any legal or equitable
25 interest Respondents may have in the Site or any portions thereof, Respondents shall serve a copy
26 of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in
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1 such interest. At least thirty (30) days prior to finalization of any transfer, Respondents shall notify
2 EPA and Ecology of the contemplated transfer.

3 4 IV. STATEMENT OF PURPOSE

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6 1. In entering into this Consent Order, the objectives of EPA, Ecology and
7 Respondents are: (a) to determine the nature and extent of contamination and any threat to the
8 public health, welfare, or the environment caused by the release or threatened release of hazardous
9 substances, pollutants, or contaminants at or from the Site, by conducting an RI, including the
10 assembly and evaluation of existing data and identification of possible early actions, and conduct a
11 river-wide FS, in accordance with the Statement of Work (SOW) attached as Attachment A; the FS
12 will determine and evaluate alternatives for remedial action (if any) to prevent, mitigate, or
13 otherwise respond to or remedy any release or threatened release of hazardous substances,
14 pollutants, or contaminants at or from the Site; and (b) to recover costs incurred by EPA and
15 Ecology with respect to this Consent Order.
16

17 2. The activities conducted under this Consent Order are subject to approval
18 by EPA and Ecology. Respondents shall provide all appropriate necessary information for the
19 RI/FS, in accordance with the SOW, for a CERCLA Record of Decision (ROD) and MTCA
20 Cleanup Action Plan (CAP) that is consistent with CERCLA and the National Oil and Hazardous
21 Substance Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, MTCA and regulations
22 promulgated thereunder, chapters 173-340 and 173-204 WAC, as now or hereafter amended. The
23 activities conducted under this Consent Order shall be conducted in compliance with all
24 applicable EPA and Ecology guidance, policies, and procedures.
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1 V. FINDINGS OF FACT

2 EPA and Ecology find the following facts which Respondents neither admit nor
3 deny.

4 1. The Lower Duwamish Waterway Site (Site) consists of the areal extent of
5 contamination in the Lower Duwamish Waterway. It has served as Seattle's major industrial
6 corridor since it was first created by a widening and straightening of the Lower Duwamish River
7 (and formation of Harbor Island) by the United States Army Corps of Engineers, completed in
8 1911. Industrial uses of and along the Waterway have been extensive over nearly ninety years.
9 The Waterway is also habitat to numerous fish and other aquatic species, and is a migratory
10 corridor for endangered, threatened, and other anadromous fish.
11

12 2. Contaminants found in the waterway include, but are not limited to,
13 polychlorinated biphenyls (PCBs), poly-aromatic hydrocarbons (PAHs), mercury and other
14 metals, and phthalates. The Lower Duwamish Waterway has been the subject of numerous studies
15 by various governmental and private entities which Respondents have agreed to assemble,
16 integrate and evaluate during Phase I of the RI process, as set forth in the attached SOW. Many
17 contaminant releases may have pre-dated the 1970s. Sources of releases include industrial
18 releases, sewer system outfalls and urban run-off from Respondents' facilities.
19

20 3. The Site has been evaluated and scored for, would rank on, and may be
21 proposed for the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, by
22 EPA.
23

24 4. The Port of Seattle, is a Washington Port District, duly created under RCW
25 Chap. 53. King County is the most populous county in the state of Washington. The City of Seattle
26 is the most populous municipality in the state of Washington. The Boeing Company is a Delaware
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1 Corporation doing business in the state of Washington, primarily engaged in aircraft manufacture
2 and aerospace technology. The site encompasses property owned and/or operated by the Port of
3 Seattle, King County and the City of Seattle, and property managed by the Port pursuant to a Port
4 Management Agreement with the Washington Department of Natural Resources.

5
6 5. EPA has not performed a Potentially Responsible Party search for the Site.
7 Additional parties may be potentially liable for releases and contamination at the Site.

8
9 VI. CONCLUSIONS OF LAW AND DETERMINATIONS

10 EPA and Ecology make the following conclusions of Law and Determinations
11 which Respondents neither admit or deny:

12
13 1. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §
14 9601(9), and in RCW 70.105D.020(4).

15 2. Wastes and constituents thereof at the Site, as identified in the preceding
16 Section are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §
17 9601(14), and in RCW 70.105D.020(7), or constitute "any pollutant or contaminant" that may
18 present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of
19 CERCLA, 42 U.S.C. § 9604(a)(1).

20
21 3. The presence of hazardous substances at the Site or the past, present, or
22 potential migration of hazardous substances currently located at or emanating from the Site,
23 constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42
24 U.S.C. § 9601(22), and RCW 70.105D.020(20).

25 4. Each Respondent is a "person" as defined in Section 101(21) of CERCLA,
26 42 U.S.C. § 9601(21), and RCW 70.105D.020(14).

5. Each Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622. By letter dated [____], Ecology notified each Respondent of its status as a “potentially liable person” under RCW 70.105D.040, after notice and opportunity for comment.

6. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, RCW 70.105D.050(1), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a). Pursuant to RCW 70.105D.080 and WAC 173-340-550(5), compliance with this Order in the Department of Ecology's view is the substantial equivalent of a Department supervised remedial action.

VII. ROLE OF REGULATORY AGENCIES

1. This Order is issued jointly by EPA and Ecology pursuant to their respective CERCLA and MTCA authorities, and will be jointly managed and overseen by both agencies. The agencies have agreed that written approval from an authorized representative of either agency shall be approval from both agencies, and that such approval shall not be given without the other agency's pre-authorization or consent.

VIII. WORK TO BE PERFORMED

1. For purposes of this Order, an RI/FS also means a Cleanup Study Plan under Chapter 173-204 WAC. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and before the work outlined below begins, Respondents shall notify EPA and

Ecology, in writing, of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA and Ecology's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA and Ecology's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA and Ecology disapprove, in writing, of any person(s)' technical qualifications, Respondents shall notify EPA and Ecology of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. If EPA and Ecology subsequently disapprove of the replacement(s), EPA and Ecology reserve the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. Respondents reserve the right to dispute EPA or Ecology's attempt to recover such costs. During the course of the RI/FS, Respondents shall notify EPA and Ecology, in writing, of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA and Ecology shall have the same right to approve changes and additions to personnel as they have hereunder regarding the initial notification.

2. Respondents shall conduct activities and submit deliverables as provided in the attached SOW. All such work shall be conducted in accordance with CERCLA, the NCP, MTCA and chapters 173-340 and 173-204 of the Washington Administrative Code (WAC), as now or hereafter amended, and shall be consistent with EPA and Ecology guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive # 9285.7-05) and guidance referenced therein, as may be amended or modified by EPA and Ecology. The general activities that Respondents are required

1 to perform are identified below, followed by a list of deliverables. The tasks that Respondents
2 must perform are described more fully in the SOW and guidance. Respondents City of Seattle &
3 The Boeing Company shall each have at two points in the RI/FS process a unilateral right to
4 withdraw unilaterally from this Consent Order and decline participating in further work and have
5 no further obligations under this Consent Order. This right to withdraw by each of these
6 Respondents shall occur: 1) at the conclusion of Phase I of the RI as defined in the SOW; and 2) at
7 the conclusion of the RI, including EPA and Ecology's approval of the FS Work Plan. All work
8 performed under this Order shall be in accordance with the schedules herein, and in full
9 accordance with the standards, specifications, and other requirements detailed in the attached
10 SOW and deliverables thereunder, as initially approved or modified by EPA and Ecology, and as
11 may be amended by EPA and Ecology from time to time. For the purposes of this Order, day
12 means calendar day unless otherwise noted in the Order. All Tasks set forth in this Section refer
13 to the SOW.

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16 A. Phase I RI. Respondents shall perform the Phase I RI as set forth in
17 the SOW. Within ten (10) months of the effective date of this Order, Respondents shall submit to
18 EPA and Ecology a Phase I RI Report. If EPA and Ecology disapprove of or require revisions to
19 the Phase I RI Report, in whole or in part, Respondents shall amend and submit a revised Phase I
20 RI Report to EPA and Ecology that is responsive to the directions in all joint EPA and Ecology
21 comments, within sixty (60) days of receiving EPA's and Ecology's joint comments.

22
23 B. Scoping For Phase II RI. EPA and Ecology determine the Site-
24 specific objectives of the RI/FS and devise a general management approach for the Site, as stated
25 in the SOW. Respondents shall conduct the scoping activities as described in the attached SOW
26 and referenced guidance. Respondents shall provide EPA and Ecology with the following
27 deliverables:
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1 1. Phase II RI Work Plan. Within ninety (90) days after EPA and Ecology's approval
2 of the Phase I RI Report, Respondents shall submit a Phase II RI Work Plan to EPA and Ecology.
3 If EPA and Ecology disapprove of or require revisions to the Phase II RI Work Plan, in whole or
4 in part, Respondents shall amend and submit a revised Work Plan to EPA and Ecology which is
5 responsive to the directions in all joint EPA and Ecology comments, within thirty (30) days of
6 receiving EPA and Ecology's joint comments.
7

8 2. Sampling and Analysis Plan. Within sixty (60) days after EPA and Ecology's
9 approval of the Phase II Work Plan, Respondents shall submit the Sampling and Analysis Plan to
10 EPA and Ecology. This plan shall consist of a Field Sampling Plan (FSP) and a Quality
11 Assurance Project Plan (QAPP), as described in the SOW and guidance. If EPA and Ecology
12 disapprove of or require revisions to the Sampling and Analysis Plan, in whole or in part,
13 Respondents shall amend and submit a revised Sampling and Analysis Plan to EPA and Ecology
14 which is responsive to the directions in all joint EPA and Ecology comments, within fifteen (15)
15 days of receiving EPA and Ecology's joint comments.
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17 3. Site Health and Safety Plan. Within sixty (60) days after EPA and Ecology's
18 approval of the Phase II Work Plan, Respondents shall submit the Site Health and Safety Plan to
19 EPA and Ecology.
20

21 4. Following approval or modification by EPA or Ecology, the Phase II RI Work Plan
22 and the Sampling and Analysis Plan are incorporated by reference herein.

23 C. Community Relations Plan. EPA and Ecology will prepare a Community
24 Relations/Public Participation Plan, in accordance with EPA guidance, the NCP, and WAC 173-
25 340-600(8). Respondents shall provide information supporting EPA and Ecology's community
26 relations programs.
27

28 D. Site Characterization. Following EPA and Ecology's approval or

1 modification of the Phase II RI Work Plan and Sampling and Analysis Plan, Respondents shall
2 implement the provisions of these plans to characterize the Site. Respondents shall complete Site
3 characterization within twelve (12) months of EPA and Ecology approval or modification of the
4 Work Plan and Sampling and Analysis Plan. Respondents shall provide EPA and Ecology with
5 quality-assured analytical data within five (5) days after such data are available, in an electronic
6 format showing the location, medium, and results. Respondents shall provide all analytical data to
7 EPA and Ecology upon request within five (5) days of such request or such othertime as EPA and
8 Ecology may agree to. Within seven (7) days of completion of field activities, Respondents shall
9 notify EPA and Ecology, in writing. During Site characterization, Respondents shall provide EPA
10 and Ecology with the following deliverables, as described in the SOW or Work Plan:

12 1. Technical Memorandum on Modeling of Site Characteristics. Where Respondents
13 propose that modeling is appropriate, Respondents shall submit a technical memorandum on
14 modeling of Site characteristics, as described in the SOW. If EPA and Ecology disapprove of or
15 require revisions to the technical memorandum on modeling of Site characteristics, in whole or in
16 part, Respondents shall amend and submit a revised technical memorandum on modeling of Site
17 characteristics to EPA and Ecology which is responsive to the directions in all joint EPA and
18 Ecology comments, within thirty (30) days of receiving EPA and Ecology's joint comments.

20 2. Preliminary Site Characterization Summary. Within sixty (60) days of completion
21 of the field sampling and analysis, as specified in the SOW, Respondents shall submit a
22 Preliminary Site Characterization Summary to EPA and Ecology.

24 E. FS Work Plan. As set forth in the SOW, an FS Work Plan shall be
25 developed during the Phase II RI for the performance of the FS. Respondents shall submit a draft
26 FS Work Plan as described in the SOW to EPA and Ecology. If EPA and Ecology disapprove of
27 or require revisions to the FS Work Plan, in whole or in part, Respondents shall amend and submit
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1 a revised FS Work Plan to EPA and Ecology which is responsive to the directions in all EPA and
2 Ecology joint comments, within thirty (30) days of receiving EPA and Ecology's comments

3 F. Draft Remedial Investigation Report . Within sixty (60) days after EPA and
4 Ecology approval of the Preliminary Site Characterization Summary, Respondents shall submit a
5 Draft Phase II RI Report consistent with the SOW, Phase II RI Work Plan, and Sampling and
6 Analysis Plan. If EPA and Ecology disapprove of or require revisions to the Phase II RI report, in
7 whole or in part, Respondents shall amend and submit a revised Phase II RI report to EPA and
8 Ecology which is responsive to the directions in all EPA and Ecology joint comments, within sixty
9 (60) days of receiving EPA and Ecology's comments.

11 G. Treatability Studies. If required by the FS Work plan, Respondents shall
12 conduct treatability studies. Major components of the treatability studies include determination of
13 the need for, and scope of, studies, the design of the studies, and the completion of the studies, as
14 described in the SOW and FS Work Plan. During treatability studies, Respondents shall provide
15 EPA and Ecology with the following deliverables:

17 1. Identification of Candidate Technologies Memorandum. This memorandum shall
18 be submitted within thirty (30) days after EPA and Ecology approval of the FS Work Plan. If EPA
19 and Ecology disapprove of or require revisions to the technical memorandum identifying candidate
20 technologies, in whole or in part, Respondents shall amend and submit a revised technical
21 memorandum identifying candidate technologies to EPA and Ecology which is responsive to the
22 directions in EPA and Ecology's comments, within fifteen (15) days of receiving EPA and
23 Ecology's comments.

25 2. Treatability Testing Statement of Work. If EPA and Ecology determine that
26 treatability testing is required, as set forth in the FS Work Plan, Respondents shall submit a
27 Treatability Testing Statement of Work.

1 3. Treatability Testing Work Plan. Within thirty (30) days after submission of the
2 Treatability Testing Statement of Work, Respondents shall submit a Treatability Testing Work
3 Plan, including a schedule. If EPA and Ecology disapprove of or require revisions to the
4 Treatability Testing Work Plan, in whole or in part, Respondents shall amend and submit a revised
5 Treatability Testing Work Plan to EPA and Ecology which is responsive to the directions in all
6 EPA or Ecology comments, within fifteen (15) days of receiving EPA or Ecology's comments.
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8 4. Treatability Study Sampling and Analysis Plan. Within thirty (30) days after the
9 identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a
10 Treatability Study Sampling and Analysis Plan. If EPA and Ecology disapprove of or require
11 revisions to the Treatability Study Sampling and Analysis Plan, in whole or in part, Respondents
12 shall amend and submit a revised Treatability Study Sampling and Analysis Plan to EPA and
13 Ecology which is responsive to the directions in all EPA or Ecology comments, within fifteen (15)
14 days of receiving EPA or Ecology's comments.
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16 5. Treatability Study Site Health and Safety Plan. Within thirty (30) days after the
17 identification of the need for a revised Health and Safety Plan, Respondents shall submit a
18 Treatability Study Site Health and Safety Plan.

19 6. Treatability Study Evaluation Report. Within thirty (30) days after completion of
20 any treatability testing, Respondents shall submit a Treatability Study Evaluation Report as
21 provided in the SOW and/or Work Plan. If EPA and Ecology disapprove of or require revisions
22 to the Treatability Study Report, in whole or in part, Respondents shall amend and submit a
23 Revised Treatability Study Report to EPA and Ecology which is responsive to the directions in all
24 EPA or Ecology comments, within fifteen (15) days of receiving EPA or Ecology's comments.
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26 H. Development and Screening of Alternatives. Respondents shall develop an
27 appropriate range of waste management options that will be evaluated through the development
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1 and screening of alternatives, as provided in the SOW and FS Work Plan thereunder requiring an
2 FS. During the development and screening of alternatives, Respondents shall provide EPA and
3 Ecology with the following deliverables, as set forth in the FS Work Plan:

- 4 1. Memorandum on Remedial Action Objectives.
- 5 2. Memorandum on Development and Preliminary Screening of Alternatives,
6 Assembled Alternatives Screening Results and Final Screening. Within thirty (30) days of
7 submittal of the memorandum on remedial action objectives, Respondents shall submit a
8 memorandum summarizing the development and screening of remedial alternatives, including an
9 alternatives array document as described in the FS Work Plan.

11 I. Detailed Analysis of Alternatives. Respondents shall conduct a detailed
12 analysis of remedial alternatives, as described in the FS Work Plan. During the detailed analysis
13 of alternatives, Respondents shall provide EPA and Ecology with the following deliverables and
14 presentation:

- 16 1. Report on Comparative Analysis and Presentation to EPA and Ecology. Within
17 sixty (60) days of submission of a memorandum on the development and screening of remedial
18 alternatives, Respondents shall submit a report on comparative analysis to EPA and Ecology
19 summarizing the results of the comparative analysis performed between the remedial alternatives.
20 If EPA and Ecology disapprove of or require revisions to the report on comparative analysis,
21 Respondents shall amend and submit a revised report on comparative analysis to EPA and
22 Ecology which is responsive to the directions in all joint EPA and Ecology comments, within
23 fifteen (15) days of receiving EPA and Ecology's joint comments. Within two (2) weeks of
24 submitting the original report on comparative analysis, Respondents shall make a presentation to
25 EPA and Ecology during which Respondents shall summarize the findings of the RI and remedial
26 action objectives, and present the results of the remedy selection criteria evaluation and
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1 comparative analysis, as described in the FS Work Plan.

2 2. Draft Feasibility Study Report. Within ninety (90) days of the presentation to EPA
3 and Ecology, Respondents shall submit a Draft FS Report which reflects the findings in the
4 Baseline Risk Assessment. Respondents shall refer to Table 6-5 of the RI/FS Guidance and
5 Ecology guidance for report content and format. If EPA and Ecology disapprove of or require
6 revisions to the Draft FS Report, in whole or in part, Respondents shall amend and submit a
7 Revised FS Report to EPA and Ecology which is responsive to the directions in all EPA and
8 Ecology comments, within fifteen (15) days of receiving EPA and Ecology's comments. The
9 report, as amended, and the administrative record, shall provide the basis for the Proposed Plan
10 under CERCLA §§ 113(k) and 117(a)/Proposed CAP by EPA and Ecology, and shall document the
11 development and analysis of remedial alternatives.
12

13 3. EPA and Ecology reserve the right to comment on, modify, and direct changes for
14 all deliverables in writing, and will meet with Respondents in an effort to resolve any significant
15 disputes. At EPA and Ecology's discretion, Respondents must fully correct all deficiencies and
16 incorporate and integrate all information and comments supplied by EPA or Ecology either in
17 subsequent or resubmitted deliverables.
18

19 4. Respondents shall not proceed further with any subsequent activities or tasks until
20 receiving EPA and Ecology approval for the following deliverables: Phase II RI Work Plan,
21 Sampling and Analysis Plan, Draft Phase I RI Report, Treatability Testing Work Plan, and
22 Sampling and Analysis Plan, Draft Phase II RI Report, FS Work Plan and Draft FS Report. While
23 awaiting EPA and Ecology approval on these deliverables, Respondents shall proceed with all
24 other tasks and activities which may be conducted independently of these deliverables, in
25 accordance with the schedule set forth in this Consent Order.
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27 5. Upon receipt of the Draft FS Report, EPA and Ecology will evaluate, as necessary,
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1 the estimates of the risk to the public and environment that are expected to remain after a particular
2 remedial alternative has been completed.

3 6. For all remaining deliverables not requiring EPA and Ecology approval,
4 Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting
5 EPA and Ecology approval on the submitted deliverable. EPA and Ecology reserve the right to
6 stop Respondents from proceeding further, either temporarily or permanently, on any task, activity,
7 or deliverable at any point during the RI/FS. If EPA and Ecology suspend work on any task,
8 activity or deliverable, the deadline for completion of the suspended task, activity or deliverable
9 shall be extended for the length of the suspension.
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11 7. If Respondents amend or revise a report, plan, or other submittal upon receipt of
12 EPA and Ecology comments, and EPA and Ecology subsequently disapprove of the revised
13 submittal, or if subsequent submittals do not fully reflect EPA and Ecology's directions for
14 changes, EPA and Ecology retain the right to seek penalties, perform their own studies, complete
15 the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and MTCA and the WAC,
16 and seek reimbursement from Respondents for costs, and/or seek any other appropriate relief.
17 Respondents reserve all rights consistent with this Order to defend against any such action by EPA
18 or Ecology.
19

20 8. If EPA and/or Ecology take over some of the tasks, but not the preparation of the
21 RI/FS, Respondents shall incorporate and integrate information supplied by EPA or Ecology into
22 the Final RI and/or FS Report.
23

24 9. Neither failure of EPA and Ecology to expressly approve or disapprove of
25 Respondents' submissions within any specified time period(s), nor the absence of comments, shall
26 be construed as approval by EPA and Ecology. Regardless of whether EPA and Ecology gives
27 express approval for Respondents' deliverables, Respondents are responsible for preparing
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1 deliverables acceptable to EPA and Ecology. All EPA and Ecology approvals and disapprovals
2 of deliverables shall be in writing.

3 10. Respondents shall, prior to any off-Site shipment of hazardous substances from the
4 Site to an out-of-state waste management facility, provide written notification to the appropriate
5 state environmental official in the receiving state and to EPA and Ecology's Designated Project
6 Coordinators of such shipment of hazardous substances. However, the notification of shipments
7 shall not apply to any such off-Site shipments when the total volume of such shipments will not
8 exceed ten (10) cubic yards. The notification shall be in writing, and shall include the following
9 information, where available: (1) the name and location of the facility to which the hazardous
10 substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped;
11 (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of
12 transportation. Respondents shall notify the receiving state of major changes in the shipment plan,
13 such as a decision to ship the hazardous substances to another facility within the same state, or to a
14 facility in another state.
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17 IX. BASELINE RISK ASSESSMENT

18 1. Respondents shall perform the baseline risk assessment in accordance with EPA and
19 Ecology guidance. The major components of the Baseline Risk Assessment include but may not be
20 limited to contaminant identification, exposure assessment, toxicity assessment, and human health
21 and ecological risk characterization.
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25 X. MODIFICATION OF THE WORK PLAN

26 1. If at any time during the RI/FS process, Respondents identify a need for additional
27 data, a memorandum documenting the need for additional data shall be submitted to the EPA and
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1 Ecology Project Coordinators within twenty (20) days of identification. EPA and Ecology, in their
2 discretion, will determine whether the additional data will be collected by Respondents and
3 whether it will be incorporated into reports and deliverables.

4 2. In the event of conditions posing an immediate threat to human health or welfare or
5 the environment, Respondents shall notify EPA and Ecology immediately. In the event of
6 unanticipated or changed circumstances at the Site, Respondents shall notify the EPA and Ecology
7 Project Coordinators by telephone within twenty-four (24) hours of discovery of the unanticipated
8 or changed circumstances.

10 3. EPA and Ecology may determine that in addition to tasks defined in the initially
11 approved Work Plan, other additional work may be necessary to accomplish the objectives of the
12 RI/FS as set forth in the SOW and Work Plans. Respondents shall perform these response actions
13 in addition to those required by the SOW or any approved Work Plan. Except where necessary to
14 abate an emergency, Respondents shall not perform any remedial activities at the Site inconsistent
15 with this Order unless EPA and Ecology concur in writing with such additional activities.
16 Respondents shall confirm their willingness to perform the additional work, in writing, to EPA and
17 Ecology within seven (7) days of receipt of the EPA and Ecology request, or Respondents shall
18 invoke dispute resolution. Subject to EPA/Ecology resolution of any dispute, Respondents shall
19 implement the additional tasks which EPA and Ecology determine are necessary. The additional
20 work shall be completed according to the standards, specifications, and schedule set forth or
21 approved by EPA and Ecology in a written modification to the Work Plan or written Work Plan
22 Supplement. EPA and Ecology reserve the right to conduct the work themselves at any point, to
23 seek reimbursement from Respondents, and/or to seek any other appropriate relief. If EPA and
24 Ecology determine that conditions at the Site are creating or have the potential to create a danger to
25 human health or welfare on-site or in the surrounding area or to the environment, EPA and Ecology
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1 may order Respondents to stop further implementation of this Order for such period of time in the
2 judgment of EPA and Ecology is needed to abate the danger.

3 4 XI. QUALITY ASSURANCE

5 1. Respondents shall assure that work performed, samples taken, and analyses
6 conducted conform to the requirements of any SOW, the QAPP and guidance identified therein.
7 Respondents will assure that field personnel used by Respondents are properly trained in the use
8 of field equipment and in chain-of-custody procedures.
9

10 11 XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION/ 12 CLEANUP ACTION PLAN, AND ADMINISTRATIVE RECORD

13 1. EPA and Ecology retain the responsibility for the release to the public of the RI/FS
14 Report. EPA and Ecology retain responsibility for the preparation and release to the public of the
15 Proposed Plan and the Record of Decision/Cleanup Action Plan in accordance with CERCLA, the
16 NCP, MTCA and chapters 173-340 and 173-204 WAC.
17

18 2. EPA and Ecology shall provide Respondents with the Proposed Plan, and Record
19 of Decision/Cleanup Action Plan.

20 3. EPA will determine the contents of its administrative record file for selection of the
21 remedial action. Respondents must submit to EPA and Ecology documents developed during the
22 course of the RI/FS upon which selection of the response action may be based. Respondents shall
23 provide copies of plans, task memoranda, including documentation of field modifications,
24 recommendations for further action, quality assurance memoranda and audits, raw data, field notes,
25 laboratory analytical reports, and other reports concerning the implementation of this Consent
26 Order. Respondents must additionally submit any previous studies conducted under state, local, or
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1 other federal authorities relating to selection of the response action, and all communications
2 between Respondents and state, local, or other federal authorities concerning selection of the
3 response action. At EPA and Ecology's discretion, Respondents may establish a community
4 information repository at or near the Site, to house one copy of the administrative record.
5

6 XIII. PROGRESS REPORTS AND MEETINGS

7
8 1. Respondents shall make presentations at, and participate in, meetings at the request
9 of EPA and Ecology during the initiation, conduct, and completion of the RI/FS. In addition to
10 discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new
11 issues. Meetings will be scheduled at EPA and Ecology's discretion.

12 2. In addition to the deliverables set forth in this Order, Respondents shall provide to
13 EPA and Ecology monthly progress reports by the tenth (10th) day of the following month. At a
14 minimum, with respect to the preceding month, these progress reports shall: (1) describe the
15 actions which have been taken to comply with this Consent Order during that month; (2) include all
16 results of sampling and tests and all other data received by Respondents; (3) describe work
17 planned for the next two (2) months with schedules relating such work to the overall project
18 schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated
19 problems, any actual or anticipated delays, and solutions developed and implemented to address
20 any actual or anticipated problems or delays.
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23 XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

24
25 1. All results of sampling, tests, modeling, or other data (including raw data)
26 generated by Respondents, or on Respondents' behalf, for the implementation of this Consent
27 Order, shall be submitted to EPA and Ecology in the subsequent Monthly Progress Report as
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1 described in the preceding Section of this Order. EPA and Ecology will each make available to
2 the Respondents validated data generated by that agency unless it is exempt from disclosure by any
3 federal or state law or regulation.

4 2. Respondents will verbally notify EPA and Ecology at least fifteen (15) days prior
5 to conducting significant field events as described in the SOW, Work, Work Plan, or Sampling and
6 Analysis Plan. At EPA and Ecology's verbal or written request, or the request of EPA's oversight
7 assistant, Respondents shall allow split or duplicate samples to be taken by EPA and Ecology (and
8 their authorized representatives) of any samples collected by Respondents in implementing this
9 Consent Order. All split samples of Respondents shall be analyzed by the methods identified in
10 the QAPP.
11

12 3. At all reasonable times, EPA, Ecology, and their authorized representatives shall
13 have the authority to enter and freely move about all property over which the Respondents have
14 possession or control at the Site and off-Site areas where work, if any, is being performed, for the
15 purposes of inspecting conditions, activities, the results of activities, records, operating logs, and
16 contracts related to the Site pursuant to this Order; reviewing the progress of the Respondents in
17 carrying out the terms of this Consent Order; conducting tests as EPA, Ecology or their authorized
18 representatives deem necessary; using a camera, sound recording device, or other documentary
19 type equipment; and verifying the data submitted to EPA and Ecology by the Respondents.
20 Respondents shall allow these persons to inspect and copy all non-privileged records, files,
21 photographs, documents, sampling and monitoring data, and other non-privileged writings related
22 to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as
23 limiting or affecting EPA's and Ecology's right of entry or inspection authority under federal or
24 state law. All parties with access to the Site under this paragraph shall comply with all approved
25 Health and Safety Plans required by the SOW. By signing this Consent Order Respondents agree
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1 that this Order constitutes reasonable notice of access, and agree to allow access to the Site at all
2 reasonable times for purposes of overseeing work performed under this Order. If EPA and
3 Ecology desire to obtain access to any manufacturing or process areas which Respondent The
4 Boeing Company has appropriately designated for conducting activities utilizing secrets associated
5 with U.S. Department of Defense (DOD) projects, The Boeing Company may request a reasonable
6 delay to providing such access so that it may confer with EPA's and Ecology representatives
7 regarding the purpose of the inspection in the area and appropriate precautions for protecting DOD
8 secrets.
9

10 4. Respondents may assert a claim of business confidentiality covering part or all of
11 the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R.
12 § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. §
13 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b), and
14 substantiated at the time the claim is made. Information determined to be confidential by EPA will
15 be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the
16 information when it is submitted to EPA, it may be made available to the public by EPA or the
17 state without further notice to the Respondents. Respondents agree not to assert confidentiality or
18 privilege claims with respect to any data related to Site conditions, sampling, or monitoring. This
19 paragraph does not affect any obligation of Ecology to disclose records under state law.
20

21 5. In entering into this Order, Respondents waive any objections to the release of any
22 data gathered, generated, or evaluated by EPA, Ecology or Respondents in the performance or
23 oversight of the work that has been verified according to the quality assurance/quality control
24 (QA/QC) procedures required by the Consent Order or any EPA or Ecology-approved Work Plans
25 or Sampling and Analysis Plans. If Respondents object to the release of any other data relating to
26 the RI/FS, Respondents shall submit to EPA and Ecology a report that identifies and explains its
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1 objections, describes the acceptable uses of the data, if any, and identifies any limitations to the
2 use of the data. The report must be submitted to EPA and Ecology within fifteen (15) days of the
3 monthly progress report containing the data.

4 6. If the Site, or the off-Site area that is to be used for access or is within the scope of
5 the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order,
6 Respondents will use best efforts to obtain Site access agreements from the present owner(s)
7 within one hundred twenty (120) days from the date the EPA or Ecology determines that access is
8 needed. Such agreements shall provide access for EPA and Ecology, their contractors and
9 oversight officials, or their authorized representatives, and such agreements shall specify that
10 Respondents are not EPA or Ecology's representative with respect to liability associated with Site
11 activities. Such agreements shall not limit the authorities of EPA or Ecology to obtain access in
12 any way. Copies of such agreements shall be provided to EPA and Ecology prior to Respondents'
13 initiation of field activities. Respondents' best efforts shall include providing reasonable
14 compensation to any off-Site property owner. If access agreements are not obtained within the
15 time referenced above, Respondents shall immediately notify EPA and Ecology of its failure to
16 obtain access. EPA and/or Ecology may obtain access for Respondents, perform those tasks or
17 activities themselves, or terminate the Consent Order in the event that Respondents cannot obtain
18 access agreements. In the event that EPA and/or Ecology performs those tasks or activities with
19 EPA or Ecology contractors and does not terminate the Consent Order, Respondents shall perform
20 all other activities not requiring access to that Site, and shall reimburse EPA for all EPA costs
21 incurred which are not inconsistent with the NCP and shall reimburse Ecology for all Ecology
22 costs incurred in performing such activities. Respondents shall integrate the results of any such
23 tasks undertaken by EPA or Ecology into its reports and deliverables. Respondents also agree to
24 indemnify the United States and State of Washington as specified in Section XXV of this Order.
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2 XV. DESIGNATED PROJECT COORDINATORS

3 1. Documents including reports, approvals, disapprovals, and other correspondence
4 which must be submitted under this Consent Order, shall be sent by certified mail, return receipt
5 requested, to the following addressees or to any other addressees which Respondents, EPA, and
6 Ecology designate in writing. When documents are sent to Respondents' Project Coordinator,
7 EPA and Ecology shall send electronic notification to each Respondent.
8

9 (a) Five copies of documents submitted to EPA :

10 Loren McPhillips
11 EPA Project Coordinator,
12 U.S. Environmental Protection Agency
1200 Sixth Avenue, M/S ECL-111
Seattle, WA 98101

13 (b) Four copies of documents submitted to Ecology:

14 Rick Huey
15 Ecology Project Coordinator
16 Department of Ecology
3190 160th Avenue S.E.
Bellevue, WA 98008

17 (c) Documents submitted to Respondents:

18 D. Michael Johns
19 Wind Ward Environmental, LLC
200 West Mercer Street, Suite 401
Seattle, WA 98119

21 2. On or before the effective date of this Consent Order, EPA, Ecology, and
22 Respondents shall each designate their own Project Coordinator. Each Project Coordinator shall
23 be responsible for overseeing the implementation of this Consent Order. To the maximum extent
24 possible, communications between Respondents and EPA and Ecology shall be directed to the
25 Project Coordinator by mail or electronic mail, with copies to such other persons as EPA,
26 Ecology, and Respondents may respectively designate. Communications include, but are not
27 limited to, all documents, reports, approvals, and other correspondence submitted under this
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1 Consent Order.

2 3. EPA, Ecology, and Respondents all have the right to change their respective
3 Project Coordinator. All parties must be notified, in writing, at least ten (10) days prior to the
4 change.

5 4. EPA's Project Coordinator shall have the authority lawfully vested in a
6 Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. EPA's Project
7 Coordinator shall have the authority consistent with the NCP, and Ecology's Project Coordinator
8 shall have the authority under MTCA to halt any work required by this Consent Order, and to take
9 any necessary response when he or she determines that conditions at the Site may present an
10 immediate endangerment to public health or welfare or the environment. The absence of the EPA
11 or Ecology Project Coordinator from the area under study pursuant to this Consent Order shall not
12 be cause for the stoppage or delay of work.

13 5. EPA shall arrange for a qualified person to assist in its oversight and
14 review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. §
15 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but
16 is not authorized to modify the Work Plan.

17 18 XVI. OTHER APPLICABLE LAWS

19 1. Respondents shall comply with all laws that are applicable when
20 performing work pursuant to this Order. No local, state, or federal permit shall be required for
21 any portion of any action conducted entirely on-site, including studies, where such action is
22 selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

23 24 XVII. RECORD PRESERVATION

25 1. All records and documents in Respondents' possession that concern the
26 implementation of this Order shall be preserved during the conduct of this Consent Order and for a
27 minimum of ten (10) years after completion of the work performed under this Consent Order.

1 Respondents shall acquire and retain copies of all documents that relate to the Site and are in the
2 possession of its employees, agents, contractors and consultants. After this 10-year period,
3 Respondents shall notify EPA and Ecology at least ninety (90) days before the documents are
4 scheduled to be destroyed. If EPA and Ecology request that the documents be saved, Respondents
5 shall, at no cost to EPA and Ecology, give the requesting agency all non-privileged documents or
6 copies of the non-privileged documents.

7 8 XVIII. DISPUTE RESOLUTION

9 1. Any disputes concerning activities or deliverables required under this
10 Order, shall be resolved as follows: If any Respondent objects to any EPA and Ecology notice of
11 disapproval or requirement made pursuant to this Consent Order, the Respondent shall notify
12 EPA's and Ecology's Project Coordinators, in writing, of its objections within fourteen (14) days
13 of receipt of the disapproval notice or requirement. Respondent's written objections shall define
14 the dispute, state the basis of Respondent's objections, and be sent certified mail, return receipt
15 requested. EPA, Ecology and Respondent then have an additional fourteen (14) days from the
16 Respondent's receipt of the return receipt to reach agreement. If an agreement is not reached
17 within fourteen (14) days, the Respondent may request a determination by EPA's Environmental
18 Cleanup Division (ECL) Director and Ecology's Toxics Cleanup Program (TCP) Manager, or
19 his/her successor(s). The ECL Director and TCP Manager's determination is EPA and Ecology's
20 final decision. Respondent shall proceed in accordance with EPA and Ecology's final decision
21 regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If any
22 Respondent does not agree to perform or does not actually perform the work in accordance with
23 EPA and Ecology's final decision, EPA and Ecology each reserve the right in their sole discretion
24 to conduct the work itself, to seek reimbursement from the Respondent(s), to seek enforcement of
25 the decision, to seek penalties, and/or to seek any other appropriate relief.

26 2. No Respondent is relieved of its obligations to perform and conduct
27 activities and submit deliverables on the schedule set forth in the SOW or any Work Plan, while a
28 matter is pending in dispute resolution. The invocation of dispute resolution does not stay

1 stipulated penalties under this Order.

2
3 XIX. DELAY IN PERFORMANCE, EPA STIPULATED PENALTIES, ENFORCEMENT

4 1. Unless there is Force Majeure as defined in Section XX below, if
5 Respondents fail to complete a deliverable in a timely manner or fail to produce a
6 deliverable of acceptable quality, or otherwise fail to perform in accordance with the
7 requirements of this Order, Respondents shall be liable to EPA for stipulated penalties.
8 Penalties begin to accrue on the day that performance is due or a violation occurs, and
9 extend through the period of correction. Where a revised submission by Respondents is
10 required, stipulated penalties shall continue to accrue until a satisfactory deliverable is
11 produced. EPA will provide written notice for violations that are not based on timeliness;
12 nevertheless, penalties shall accrue from the day a violation commences. EPA and
13 Ecology may, in their discretion, waive imposition of stipulated penalties if they determine
14 that Respondents have attempted in good faith to comply with this Order or in the event of
15 timely cure of defects in initial submissions. If assessed, payment shall be due within thirty
16 (30) days of receipt of a demand letter from EPA.

17 2. Respondents shall pay interest on the unpaid balance, which shall begin to
18 accrue at the end of the 30-day period, at the rate established by the Department of
19 Treasury pursuant to 30 U.S.C. § 3717. Respondents shall further pay a handling charge of
20 one percent (1%), to be assessed at the end of each thirty-one (31) day period, and a six
21 percent (6%) per annum penalty charge, to be assessed if the penalty is not paid in full
22 within ninety (90) days after it is due.

23 3. Respondents shall make all payments by forwarding a check, made payable
24 to the Hazardous Substance Superfund, to: Mellon Bank, EPA Region 10-Superfund
25 Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251.
26 Checks should identify the name of the Site, the Site identification number 10XX, and the
27 title of this Order. A copy of the check and/or transmittal letter shall be forwarded to the
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1 EPA and Ecology Project Coordinators.

2 4. For the following major deliverables, stipulated penalties shall accrue in
3 the amount of \$500 per day, per violation, for the first seven days of noncompliance;
4 \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$2,500 per
5 day, per violation, for the 15th day through the 30th day; and \$5,000 per day per violation
6 for the 31st day through the 90th day

- 7 1) An original and any revised Work Plan.
- 8 2) An original and any revised Sampling and Analysis Plan.
- 9 3) An original and any revised RI Report.
- 10 4) An original and any revised Treatability Testing Work Plan.
- 11 5) An original and any revised Treatability Study Sampling and Analysis Plan.
- 12 6) An original and any revised FS Report.

13 5. For the following interim deliverables, stipulated penalties shall accrue in the
14 amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day,
15 per violation, for the 8th through 14th day of noncompliance; \$1,500 per day, per violation,
16 for the 15th day through the 30th day of noncompliance; and \$2,500 per day per violation
17 for the 31st through the 90th day.

- 18 1) Technical memorandum on modeling of Site characteristics.
- 19 2) Preliminary Site Characterization Summary.
- 20 3) Summary of RI data.
- 21 4) Identification of candidate technologies memorandum.
- 22 5) Treatability Testing Statement of Work.
- 23 6) Treatability Study Evaluation Report.
- 24 7) Memorandum on remedial action objectives.
- 25 8) Memoranda on development and preliminary screening of alternatives,
26 assembled alternatives screening results, and final screening.
- 27 9) Comparative analysis report.

1 6. For the Monthly Progress Reports, stipulated penalties shall accrue in the amount of
2 \$200 per day, per violation, for the first week of noncompliance; \$500 per day, per
3 violation, for the 8th through 14th day of noncompliance; \$1,000 per day, per violation, for
4 the 15th day through the 30th day; and \$2,000 per day, per violation, for the 31st through
5 the 90th day.

6 7. Respondents may dispute EPA's right to the stated amount of penalties by
7 invoking the dispute resolution procedures under Section XVII herein. Penalties shall
8 accrue, but need not be paid, during the dispute resolution period. If Respondents do not
9 prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of
10 resolution of the dispute. If Respondents prevails upon resolution, no penalties shall be
11 paid.

12 8 In the event that EPA provides for corrections to be reflected in the next
13 deliverable and does not require resubmission of that deliverable, stipulated penalties for
14 that interim deliverable shall cease to accrue on the date of such decision by EPA.

15 9. The stipulated penalties provisions do not preclude EPA from pursuing any
16 other remedies or sanctions which are available to EPA because of Respondents' failure to
17 comply with this Consent Order, including, but not limited to, conduct of all or part of the
18 RI/FS. Payment of stipulated penalties does not alter Respondents' obligation to complete
19 performance under this Consent Order. Nothing in this Section on EPA's imposition of
20 stipulated penalties in any way limits Ecology's authority or capacity to enforce this Order.

21 10. Pursuant to RCW 70.105D.050, the State may enforce this Order as
22 follows:

23 (a) The Attorney General may bring an action to enforce this Order in a
24 state or federal court.

25 (b) The Attorney General may seek, by filing an action if necessary, to
26 recover amounts spent by Ecology for investigative and remedial actions and orders
27 related to the Site.
28

1 (c) In the event Respondents refuse, without sufficient cause, to comply
2 with any term of this Order, Respondents will be liable for up to three times the amount of
3 any costs incurred by the State of Washington as a result of its refusal to comply, and civil
4 penalties of up to \$25,000 per day for each day it refuses to comply.

5 (d) This Order is not appealable to the Washington Pollution Control
6 Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

7 11. Respondents are each jointly and severally liable to comply with this
8 Order. Failure to comply by one Respondent does not excuse performance by the other
9 Respondents.

10
11 XX. FORCE MAJEURE

12
13 1. "Force Majeure", for purposes of this Consent Order, is defined as any
14 event arising from causes beyond the control of Respondents and of any entity controlled by
15 Respondents, including their contractors and subcontractors, that delays the timely performance of
16 any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the
17 delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes
18 using best efforts to anticipate any potential Force Majeure event and best efforts to address the
19 effects of any potential Force Majeure event (1) as it is occurring, and (2) following the potential
20 Force Majeure event, such that the delay is minimized to the greatest extent practicable. Examples
21 of events that are not Force Majeure events include, but are not limited to, increased costs or
22 expenses of any work to be performed under this Order or the financial difficulty of Respondents
23 to perform such work.

24 2. If any event occurs or has occurred that may delay the performance of any
25 obligation under this Order, whether or not caused by a Force Majeure event, Respondents shall
26 notify, by telephone, the EPA Remedial Project Manager or, in his or her absence, the ECL
27 Director, and Ecology's Project Coordinator within forty-eight (48) hours of when Respondents
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1 knew or should have known that the event might cause a delay. Within five (5) business days
2 thereafter, Respondents shall provide, in writing, the reasons for the delay, the anticipated duration
3 of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for
4 implementation of any measures to be taken to mitigate the effect of the delay, and a statement as to
5 whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to
6 public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or
7 minimize any delay and any effects of a delay. Failure to comply with the above requirements
8 shall preclude Respondents from asserting any claim of Force Majeure.

9 3. If EPA and Ecology agree that the delay or anticipated delay is attributable
10 to Force Majeure, the time for performance of the obligations under this Order that are directly
11 affected by the Force Majeure event shall be extended by agreement of the parties, pursuant to
12 Section XXVI of this Order, for a period of time not to exceed the actual duration of the delay
13 caused by the Force Majeure event. An extension of the time for performance of the obligation
14 directly affected by the Force Majeure event shall not, of itself, extend the time for performance of
15 any subsequent obligation.

16 4. If EPA and Ecology do not agree that the delay or anticipated delay has
17 been or will be caused by a Force Majeure event, or do not agree with Respondents on the length
18 of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section
19 XVII of this Order. In any such proceeding, to qualify for a Force Majeure defense, Respondents
20 shall have the burden of demonstrating by a preponderance of the evidence that the delay or
21 anticipated delay has been or will be caused by a Force Majeure event, that the duration of the
22 delay was or will be warranted under the circumstances, that Respondents did exercise or are
23 exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and
24 that Respondents complied with the requirements of this Section.

25 5. Should Respondents carry the burden set forth in the preceding Paragraph
26 the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent
27 Order.

1 XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF COSTS

2 1. Subject to the terms and conditions of any applicable consent decrees, EPA
3 reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C.
4 § 9607, for recovery of all response costs including oversight costs, incurred by the United States
5 at the Site that are not reimbursed by Respondents, any costs incurred in the event that EPA
6 performs the RI/FS or any part thereof, and any future costs incurred by the United States in
7 connection with response activities conducted under CERCLA at this Site.

8 2. EPA reserves the right to bring an action against Respondents to enforce the
9 cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed
10 pursuant to this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42
11 U.S.C. § 9609.

12 3. Except as expressly provided in this Order, each party reserves all rights
13 and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or
14 EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive
15 relief, stipulated penalties, statutory penalties, and/or punitive damages.

16 4. Following satisfaction of the requirements of this Consent Order,
17 Respondents shall have resolved their liability to EPA for the work performed by Respondents
18 pursuant to this Consent Order. Respondents are not released from liability, if any, for any
19 response actions taken beyond the scope of this Order regarding removals, other operable units,
20 remedial design/remedial action, or activities arising pursuant to Section 121(c) of CERCLA, 42
21 U.S.C. § 9621(c).

22 5. EPA and Ecology recognize that Respondents are entering into this Consent
23 Order notwithstanding that contamination at the Site may have been caused by entities other than
24 Respondents. In actions concerning the Site, EPA agrees to apply the EPA Orphan Policy,
25 attached as Attachment B.

26 6. Respondents shall pay to Ecology costs incurred by Ecology after the
27 effective date of this Order for the implementation of this Order. These costs shall include work
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1 performed by Ecology or its contractors for investigations, remedial actions, oversight and
2 administration. Ecology costs shall include costs of direct activities and support costs of direct
3 activities as defined in WAC 173-340-550(2). Respondents shall pay the required amount within
4 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs
5 incurred, an identification of involved staff, and the amount of time spent by involved staff
6 members on the project. A general description of work performed will be provided upon request.
7 Itemized statements shall be prepared quarterly. Respondents also may review underlying
8 Ecology oversight cost documentation, including personnel time sheets, travel authorizations,
9 vouchers, and all applicable laboratory and other costs. Failure to pay Ecology's costs within 90
10 days of receipt of the itemized statement of costs will result in interest charges.

11 7. This Consent Order is not a settlement of liability under RCW 70.105D.
12 Ecology's signature on this Consent Order in no way constitutes a covenant not to sue or a
13 compromise of any Ecology rights or authority. Ecology will not, however, bring an action against
14 Respondents to recover remedial action costs paid to and received by Ecology under this Consent
15 Order. In addition, Ecology will not take additional enforcement actions against Respondents to
16 require those remedial actions required by this Consent Order, provided Respondents comply with
17 this Consent Order. Ecology reserves the right, however, to require additional remedial actions at
18 the site should it deem such actions necessary. Ecology also reserves all rights regarding the
19 injury to, destruction of, or loss of natural resources resulting from the releases or threatened
20 releases of hazardous substances from the site.

21 22 XXII. PAYMENT OF EPA OVERSIGHT COSTS

23 1. Following the issuance of this Consent Order, EPA shall submit to
24 Respondents on a periodic basis an accounting of all response and oversight costs incurred by the
25 United States after the effective date of this Order for the implementation of this Order. Such
26 response costs may include, but are not limited to, costs incurred by the United States in
27 overseeing Respondents' implementation of the requirements of this Consent Order and activities
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1 performed by the United States as part of this RI/FS, including any costs incurred to obtain access
2 for Respondents pursuant to this Consent Order, and for community relations activities for this
3 RI/FS. Costs shall include all direct and indirect costs, including, but not limited to, time and
4 travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative
5 agreement costs, compliance monitoring, including the collection and analysis of split samples,
6 inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result
7 of this Consent Order, review and approval or disapproval of reports, and costs of redoing any of
8 Respondents' tasks. Any necessary summaries, including, but not limited to EPA's certified
9 Agency Financial Management System summary data (SCORES Reports), or such other summary
10 as certified by EPA, shall serve as basis for payment demands. However, Respondents may
11 review the following underlying EPA oversight cost documentation: EPA personnel time sheets,
12 travel authorizations and vouchers; EPA contractor monthly invoices; and all applicable contract
13 laboratory program (CLP) invoices.

14 2. Respondents shall, within 30 days of receipt of each accounting, remit a
15 certified or cashier's check for the amount of the costs set forth in the accounting. If not paid
16 within 30 days of receipt of the accounting, interest shall accrue from the date of receipt of the
17 accounting through the date of payment. The interest rate is the rate of interest on investments for
18 the Hazardous Substances Superfund in section 107(a) of CERCLA, compounded annually on
19 October 1.

20 3. Checks should be made payable to the Hazardous Substances Superfund and
21 should include the name of the site, the site identification number 10XX, and the title of this
22 Consent Order. Checks should be forwarded to: Mellon Bank, EPA Region 10-Superfund
23 Accounting, P.O. Box 360903M, Pittsburgh, PA 15251.

24 4. Copies of the transmittal letter and check should be sent simultaneously to
25 the EPA Project Coordinator.

26 5. Respondents agree to limit any disputes concerning costs to accounting
27 errors and the inclusion of costs outside the scope of this Consent Order, including, but not limited
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1 to, costs for work which is inconsistent with this Order. Respondents shall identify any contested
2 costs and the basis of its objection. All undisputed costs shall be remitted by Respondents in
3 accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an
4 interest bearing escrow account while the dispute is pending. Respondents bear the burden of
5 establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent
6 Order.

8 XXIII. DISCLAIMER

9 1. Respondents deny liability for most of the hazardous substances at the Site.
10 and, by entering into this Consent Order, Respondents do not necessarily agree with EPA and
11 Ecology's Findings of Fact and Conclusions of Law. Furthermore, the participation of
12 Respondents in this Order shall not be considered an admission of liability in any judicial or
13 administrative proceeding other than a proceeding by the United States or the State, including EPA
14 and Ecology, to enforce this Consent Order or a judgment relating to it. Respondents retain all of
15 their defenses consistent with this Order to any actions taken by EPA and/or Ecology and
16 otherwise reserve all of their rights to assert claims against other potentially responsible parties
17 and potentially liable persons at the Site. However, Respondents agree not to contest the validity
18 or terms of this Order, or the procedures underlying or relating to it in any action brought by the
19 United States, including EPA, or the state of Washington, including Ecology, to enforce its terms.

21 XIV. OTHER CLAIMS

22 1. In entering into this Order, Respondents waive any right to seek
23 reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondents also waive
24 any right to present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612.
25 This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2)
26 of CERCLA, 42 U.S.C. § 9611(a)(2). Respondents further waive all other statutory and common
27 law claims against EPA and Ecology, including, but not limited to, contribution and counterclaims,
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1 relating to or arising out of conduct of the RI/FS.

2 2. Nothing in this Order shall constitute or be construed as a release from any
3 claim, cause of action, or demand in law or equity against any person, firm, partnership,
4 subsidiary, or corporation not a signatory to this Consent Order for any liability it may have
5 arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation,
6 release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or
7 taken from the Site.

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10 XV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

11 1. Respondents shall separately establish and maintain a financial instrument
12 or trust account or other financial mechanism acceptable to EPA and Ecology, including a
13 demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part
14 264.143(f), sufficient to assure the work and any other obligations required under this Consent
15 Order, including a margin for cost overruns. Within fifteen (15) days after the effective date of this
16 Consent Order, Respondents shall fund the financial instrument or trust account sufficiently to
17 perform the work required under this Consent Order projected for the period beginning with the
18 effective date of the Order through 2002. Beginning January 1, 2003, and on or before the 15th
19 calendar day of each calendar year quarter thereafter, Respondents shall fund the financial
20 instrument or trust account sufficiently to perform the work and other activities required under this
21 Order projected for the succeeding calendar year quarter.

22 2. If at any time the net worth of the financial instrument or trust account is
23 insufficient to perform the work and other obligations under the Order for the upcoming quarter,
24 Respondents shall provide written notice to EPA within seven (7) days after the net worth of the
25 financial instrument or trust account becomes insufficient. The written notice shall describe why
26 the financial instrument or trust account is funded insufficiently and explain what actions have been
27 or will be taken to fund the financial instrument or trust account adequately.

1 3. (a) Prior to commencement of any work under this Order, Respondents
2 shall secure, and shall maintain in force for the duration of this Order, and for two (2) years after
3 the completion of all activities required by this Consent Order, Comprehensive General Liability
4 (CGL) and automobile insurance, with limits of \$ five (5) million dollars, combined single limit,
5 naming the United States as additional insured. The CGL insurance shall include Contractual
6 Liability Insurance in the amount of \$ 1 million per occurrence, and Umbrella Liability Insurance
7 in the amount of \$ 2 million per occurrence.

8 (b) Respondents shall also secure, and maintain in force for the duration
9 of this Order and for two (2) years after the completion of all activities required by this Consent
10 Order the following:

11 i. Professional Errors and Omissions Insurance in the amount of
12 \$1,000,000.00 per occurrence.

13 ii. Pollution Liability Insurance in the amount of \$ 1,000,000.00 per
14 occurrence, covering as appropriate both general liability and professional liability arising from
15 pollution conditions.

16 (c) For the duration of this Order, Respondents shall satisfy, or shall
17 ensure that their contractors or subcontractors satisfy, all applicable laws and regulations
18 regarding the provision of employer's liability insurance and workmen's compensation insurance
19 for all persons performing work on behalf of the Respondents, in furtherance of this Order.

20 (d) If Respondents demonstrates by evidence satisfactory to EPA that
21 any contractor or subcontractor maintains insurance equivalent to that described above, or
22 insurance covering the same risks but in a lesser amount, then with respect to that contractor or
23 subcontractor Respondents need provide only that portion of the insurance described above which
24 is not maintained by the contractor or subcontractor.

25 (e) Prior to commencement of any work under this Order, and annually
26 thereafter on the anniversary of the effective date of this Order, Respondents shall provide to EPA
27 certificates of such insurance and a copy of each insurance policy.
28

1 4. At least seven (7) days prior to commencing any work under this Consent
2 Order, Respondents shall certify to EPA that the required insurance has been obtained by that
3 contractor.

4 5. Respondents agree to indemnify and hold the United States and the State of
5 Washington, their agencies, departments, agents, and employees harmless from any and all claims
6 or causes of action arising from or on account of acts or omissions of Respondents, their
7 employees, agents, servants, receivers, successors, assignees, or any persons including, but not
8 limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this
9 Consent Order. The United States and the State of Washington or any agency or authorized
10 representative of those governments shall not be held as a party to any contract entered into by
11 Respondents in carrying out activities under this Consent Order.

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13 XVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

14 1. The effective date of this Consent Order shall be the date it is signed by the
15 later of EPA and Ecology.

16 2. This Consent Order may be amended by mutual agreement of EPA, Ecology
17 and Respondents. Amendments shall be in writing and shall be effective when signed by
18 Respondents, EPA and Ecology. EPA and Ecology Project Coordinators do not have the authority
19 to sign amendments to the Consent Order.

20 3. No informal advice, guidance, suggestions, or comments by EPA or
21 Ecology regarding reports, plans, specifications, schedules, and any other writing submitted by
22 Respondents will be construed as relieving Respondents of their obligation to obtain such formal
23 approval as may be required by this Order. Any deliverables, plans, technical memoranda,
24 reports (other than progress reports), specifications, schedules, and attachments required by this
25 Consent Order are, upon approval by EPA and Ecology incorporated into this Order.

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27 XVII. TERMINATION AND SATISFACTION

1 1. This Consent Order shall terminate when Respondents demonstrate, in
2 writing, and certify to the satisfaction of EPA and Ecology that all activities required under this
3 Consent Order, as amended by any modifications,, including any additional work, payment of
4 oversight costs, and any stipulated penalties demanded by EPA and Ecology, have been performed
5 and EPA and Ecology have approved the certification. This approval shall not, however,
6 terminate Respondents' obligation to comply with Sections XVII, XXI, and XXII of this Consent
7 Order.

8 2. The certification shall be signed by a responsible official representing each
9 Respondent. Each representative shall make the following attestation: "I certify that the
10 information contained in or accompanying this certification is true, accurate, and complete." For
11 purposes of this Consent Order, a responsible official is a corporate official who is in charge of a
12 principal business function.

13
14 XXVIII. PUBLIC NOTICE OF ORDER

15 1. WAC 173-340-600(10)(c) requires a thirty (30) day public comment period
16 before this Agreed Order for a RI/FS becomes effective. Any substantial changes to the Order
17 agreed to by the parties, such as future SOWs, shall also be subject to public notice and
18 opportunity to comment. Ecology and EPA shall be responsible for providing such public notice
19 and reserve the right to modify or withdraw any provisions of this Order or any substantial
20 changes to the Order should public comment disclose facts or considerations which indicate to
21 Ecology and EPA that the Order or proposed changes to it are inadequate or improper in any
22 respect. A Public and Tribal Funding and Participation Agreement is attached as Attachment B
23 hereto.

24 Respondent Port of Seattle:

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27 BY:_____ DATE:_____

M.R. Dinsmore, Executive Director

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Respondent King County:

BY: _____ DATE: _____

Ron Sims, King County Executive

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Respondent City of Seattle:

BY: _____ DATE: _____

Paul Schell, Mayor

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Respondent The Boeing Company:

BY:_____ DATE:_____

Kirk J. Thomson, Director of Energy & Environmental Affairs

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U.S. Environmental Protection Agency, Office of Environmental Cleanup

BY: _____ DATE: _____

Michael Gearheard, Director

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State of Washington, Department of Ecology, Toxics Cleanup Program

BY:_____ DATE:_____

James J. Pendowski, Program Manager